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Ends Taxation of Certain Food Products.

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Ends Taxation of Certain Food Products. Initiative Constitutional Amendment and Statute.

Official Title and Summary Prepared by the Attorney General

ENDS TAXATION OF CERTAIN FOOD PRODUCTS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

- Amends Constitution to prohibit state and local governments from imposing sales or use taxes on food products which are exempt from such taxation under existing statutes or this initiative.
- Adds statute exempting candy, bottled water, and snack foods from sales and use taxes.

Summary of Legislative Analyst's

Estimate of Net State and Local Government Fiscal Impact:

- Reduces sales and use tax revenue to the state by \$210 million in the current year (1992-93) and \$330 million annually thereafter.
- Reduces sales and use tax revenue to local governments by \$70 million in the current year and \$120 million annually thereafter.

Analysis by the Legislative Analyst

Background

Currently, a sales and use tax is imposed on most goods purchased in this state. Because there are both state and local government components of this tax, the total sales tax rate varies from county to county. It averages, however, about 8 percent statewide.

State law does not allow the sales tax to be imposed on certain items. The tax does not apply, for example, to most food items sold for home consumption. In 1991, however, state law was changed to apply the sales tax to several food items: candy, "snack food," and bottled water.

Proposal

This measure amends the State Constitution so as to prohibit the state, or any county, city, or special district, from imposing sales or use taxes on food products used for home consumption. Thus, the measure places the current statutory exemption for food products (which

can be changed by action of the Legislature and the Governor) in the Constitution (which can only be changed by a vote of the people).

This measure also changes state law to define candy, snack foods, and bottled water as food products. As a result of this change, the measure exempts these items from the sales tax. As above, a vote of the people would be required to make them taxable.

Fiscal Effect

For the current (1992-93) fiscal year, this measure would reduce state government sales and use tax revenues by about \$210 million. In addition, it would reduce local government revenue by approximately \$70 million.

In subsequent years, the total revenue losses would be about \$330 million for the state and approximately \$120 million for local governments.

For text of Proposition 163 see page 71

Ends Taxation of Certain Food Products. Initiative Constitutional Amendment and Statute.

163

Argument in favor of Proposition 163

"Proposition 163" is the Don't Tax Food Initiative. It repeals the sales tax that was placed on food, bottled water, and candy in 1991.

We have a proud tradition in California of not taxing the essentials of life. And there is nothing more basic than the food and water we consume in order to survive.

Yet a food tax was passed last year. A sales tax is the most regressive levy that places the greatest burden on those who can least afford the tax. And an even worse policy is to place a sales tax on food. This is the first step toward a tax on all food products in California.

And the revenue generated for the General Fund is less than *one-half of one percent* of the overall State Budget.

The food tax not only violates a great state tradition, is unfair and cruel, but it is an administrative nightmare.

Small pies are taxed—large pies are not.

Granola bars are taxed—whole granola is not.

Pretzels are taxed—peanuts are not.

Bottled water is taxed—tap water is not.

This is nonsense. And it ought to be stopped.

"Proposition 163" stops it. It amends—or changes—the California State Constitution to prohibit forever state and local governments from imposing sales or use taxes on bottled water, candy and food products which are exempt from such taxation under existing statutes.

Taxes ought to be fair to all California taxpayers.

Taxing food is a bad idea but arbitrarily and confusingly taxing certain foods is even worse.

This tax should be dumped.

"Proposition 163" repeals the food tax.

Vote YES on "Proposition 163."

RICHARD E. FLOYD

Member of the Assembly, 53rd District

PETER JENSEN

Executive Director

Calif. Bottled Water Assoc.

JACKIE SPEIER

Member of the Assembly, 19th District

No argument against Proposition 163 was filed

(c) The ~~fiduciary~~ members of the retirement board of the a public pension or retirement system shall discharge ~~his or her~~ their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The ~~fiduciary~~ members of the retirement board of the a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly ~~prudent~~ not prudent to do so.

(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term "retirement board" shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term "retirement board" shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system.

Section Five. Liberal Interpretation. The provisions of this act shall be liberally interpreted to effect their purposes.

Section Six. Conflicting Law. In the event that this measure and another measure or measures relating to the public pension and retirement systems of this state, or any of them, shall appear on the statewide general election ballot on November 3, 1992, the provisions of these measures shall be deemed to be in conflict. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and the provisions of the other measure or measures shall be null and void. In the event that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

Section Seven. Severability. If any provision of this act shall be found or held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not affect the remaining provisions of this measure, and to this end the provisions of this measure are severable.

Section Eight. Effective Date. This act shall take effect immediately upon certification of the official canvass by the Secretary of State.

Proposition 163: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding a section thereto, and amends a section of the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 34 is added to Article XIII of the California Constitution, to read:

SEC. 34. Neither the State of California nor any of its political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption except as provided by statute as of the effective date of this section.

SEC. 2. Section 6359 of the Revenue and Taxation Code, as amended by Chapter 88 of the Statutes of 1991, is amended to read:

6359. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of food products for human consumption.

(b) For the purposes of this section, "food products" include all of the following:

(1) Cereals and cereal products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, ~~other than candy or gum, confectionery, coffee and coffee substitutes, tea, and cocoa and cocoa products; other than candy or confectionery.~~

(2) Milk and milk products, milkshakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

(3) All fruit juices, vegetable juices, and other beverages, whether liquid or frozen, ~~except including~~ bottled water, *but excluding* spirituous, malt or vinous liquors or carbonated beverages.

(c) For purposes of this section, "food products" do not include ~~any of the following~~:

(1) ~~Medicines~~ *medicines* and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

(2) ~~Snack foods.~~ *For purposes of this section, "snack foods" means cookies, crackers (excluding soda, graham, and arrowroot crackers), potato chips, snack cakes or pies, corn or tortilla chips, pretzels, granola snacks, popped popcorn, fabricated chips, and fabricated snacks. "Snack foods" include only items that are sold in a condition suitable for consumption without further processing such as cooking, heating, or thawing.*

(d) None of the exemptions provided for in this section apply to any of the following:

(1) When the food products are served as meals on or off the premises of the retailer.

(2) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

(3) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer.

(4) When the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, marinas, campgrounds, and recreational vehicle parks.

(5) When the food products are sold through a vending machine.

(6) When the food products sold are furnished in a form suitable for consumption on the seller's premises, and both of the following apply:

(A) Over 80 percent of the seller's gross receipts are from the sale of food products.

(B) Over 80 percent of the seller's retail sales of food products are sales subject to tax pursuant to paragraph (1), (2), (3), or (7).

(7) When the food products are sold as hot prepared food products.

(e) "Hot prepared food products," for the purposes of paragraph (7) of subdivision (d), include a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot specialty dish or serving, or a hot sandwich or a hot pizza, including any cold components or side items. Paragraph (7) of subdivision (d) shall not apply to a sale for a separate price of bakery goods or beverages (other than bouillon, consommé, or soup), or where the food product is purchased cold or frozen; "hot prepared food products" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

~~The amendments to this section by the act adding this subdivision shall become operative on July 15, 1991.~~

SEC. 3. Section 2 of this act shall take effect December 1, 1992. Section 1 of this act shall take effect January 1, 1993.

SEC. 4. The provisions of Section 1 of this act shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.

SEC. 5. If any provision of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.